

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

JOHN F. KNIGHT, JR., and
ALEASE S. SIMS, et al.,
individually and on behalf of
others similarly situated,

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Plaintiffs and Plaintiffs-
Intervenors,
**UNITED STATES OF
AMERICA,**

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Plaintiff-Intervenor,

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Civil Action No.
2:83-cv-1676-HLM

v.

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THE STATE OF ALABAMA, et
al.,
Defendants.

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**SETTLEMENT AGREEMENT BETWEEN THE KNIGHT-SIMS
PLAINTIFFS AND AUBURN UNIVERSITY**

I. Purpose and Basis of the Agreement

This Settlement Agreement (hereinafter referred to as
"Agreement") is entered into by John F. Knight, Jr., and Alease S.
Sims et al., on behalf of themselves and the plaintiff class they

have been certified to represent, and by defendant Auburn University, which includes Auburn University's main campus as well as Auburn University at Montgomery ("AUM"). The purpose of this Agreement is to specify the terms on which the Knight-Sims plaintiffs will join Auburn University in requesting that the Court enter a judgment finally dismissing any and all claims against Auburn University in this action.

1. Applicable desegregation law requires the Court to determine whether Auburn University has complied in good faith with the requirements of the 1991 and 1995 Remedial Decrees and whether through that compliance any remaining vestiges of segregation have been eliminated to the extent practicable and consistent with sound educational practices. The Court must also satisfy itself that the State's system of public higher education will continue to operate in a constitutional and non-discriminatory fashion before it can declare the system to be unitary. To that end, this Agreement's primary focus is on continuing to improve

meaningful African American participation in Alabama's system of public higher education.

Defendant University acknowledges that since entry of the Court's 1991 Remedial Decree, it has been enjoined from maintaining vestiges of *de jure* segregation and from engaging in practices which have the effect of impeding the desegregation of the state's institutions of higher education.

2. By entering into this Agreement, the Plaintiffs acknowledge that Auburn University has satisfied this legal burden to warrant termination of this Decree with respect to it. The parties agree that good faith efforts to enhance diversity should continue, and that continued progress does not depend on continued federal court supervision. Auburn University pledges to continue to make good faith efforts to further the progress that has been achieved over the course of this litigation in redressing historical discrimination in higher education against African-American citizens of this state, and reaffirms its good faith

commitment to operate in a constitutional and non-discriminatory fashion.

II. Agreement To Develop and Implement Strategic Diversity Plans

1. Auburn University agrees that its main campus will implement a Strategic Diversity Plan in essentially the form shown on Attachment 1 hereto, and that AUM will develop and implement a similar Strategic Diversity Plan tailored to its own institutional circumstances. Provided, however, that the parties are not asking the Court to approve and to adopt as part of its final judgment the substantive provisions of the Auburn Strategic Diversity Plan in Attachment 1, which will remain subject to revision through the collegial process described in section II.4 below. The Auburn main campus plan will be implemented not later than 90 days following the date of final approval of this Agreement by the Court. Development of the AUM plan shall commence no later than the date this Agreement is finally

approved by the Court, and implementation of the Plan shall begin no later than one year later.

2. The Knight-Sims plaintiffs acknowledge that the Strategic Diversity plan for Auburn University's main campus was developed through a process that included representatives of African Americans on that campus and in its larger service community, and that the plan is a product of inclusion and consensus.

3. The ultimate content of the Strategic Diversity Plan for AUM shall be discretionary with the administration of that institution, but, like the plan for Auburn's main campus, the plan shall be developed and implemented through a process that includes collegial dialogue with and input from representatives of African Americans on campus and in its larger service community, to the end that the plan is a product of inclusion and consensus.

The Strategic Diversity Plan will include the development of dynamic goals and timetables for increasing the number of

African-American members of the defendant University's faculty and administration, not as legally or contractually enforceable quotas but as standard management techniques for determining the Plan's effectiveness. These goals and timetables shall be subject to periodic review and modification in light of experience with implementation of the Plan and changing circumstances.

The Strategic Diversity Plan will require that African-American representation be on all search committees for presidents and all EEO-1 level administrative positions and, to the extent practicable, on all search committees for faculty.

4. Once implemented, the Strategic Diversity Plans for Auburn University's respective campuses shall be subject to revision from time to time within the discretion of their administrations, including decisions to continue or discontinue a particular strategic diversity program or initiative or to establish a new or different program or initiative. Any such changes will be made and implemented through a process that includes collegial

dialogue and input from African Americans on the respective campuses.

5. Auburn University agrees to establish administrative positions at the Vice-President or other cabinet level to oversee implementation of the respective Strategic Diversity Plans for Auburn's main campus and for AUM.

6. Auburn University agrees that the respective Strategic Diversity Plans for its two campuses shall be endorsed by its Board of Trustees.

7. Auburn University agrees that representatives from both its campuses will attend annual conferences with other defendant universities to review and critique the development, terms and implementation of their strategic diversity plans and to exchange information about best practices. Representatives of Auburn University's African-American faculty organization and the Alabama Black Faculty Association shall be allowed to attend and to participate fully in these conferences. Auburn University

agrees to post on its web site a report of the annual conference and any recommendations proceeding therefrom, including any minority reports and recommendations.

III. Reporting

Auburn University agrees that both its campuses will prepare and post to its web site by February 1, 2007, and by February 1 of each year thereafter for the next five years a Strategic Diversity Report, the contents of which shall be determined by each respective administration, but which shall, at a minimum, contain the following information:

- a) Racial composition data of student body (total, undergraduate, and graduate) from 1991 to the prior Fall semester;
- b) Racial composition data of students awarded bachelor, graduate and professional degrees the prior academic year for which data is available;
- c) Racial composition of full-time faculty from 1991 to

the prior Fall semester;

d) Racial composition of presidents, provosts, vice presidents, deans, and other EEO-1 level

administrators for 1991 to the prior Fall semester;

e) Racial analysis of faculty and EEO-1 level

administrative searches filled during the past academic year, including the number of African Americans who self-identified as applicants for the position; and

f) An assessment of progress by the institution in enhancing diversity and/or moving toward its diversity goals, with an emphasis on the representation of black faculty, EEO-1 administrators, and students.

IV. Board Commitment and Institutional Statements

1. Seeking to secure diversity within higher education institutions is an educational policy that Auburn University freely and enthusiastically endorses as essential to the education of its students and as part of its broader educational mission. Auburn

University recognizes that the educational benefits flowing from racial and ethnic diversity are considerable. Auburn University agrees that students who learn from each other in an environment with a variety of backgrounds are more apt to understand and appreciate the world they inhabit than students who are educated in more culturally and racially homogenous institutions. In this context, diversity is not the end in itself but is aligned with Auburn University's commitment to prepare all its students for productive lives in the twenty-first century. Consistent with applicable law, Auburn University also recognizes that the educational interest in diversity is conceptually broader than racial and ethnic diversity alone.

2. The Knight-Sims plaintiffs agree that the Strategic Diversity Plan developed for Auburn University's main campus is an adequate and sufficient recognition and acknowledgment that diversity is important to the institution and that its educational mission is enhanced and furthered by the existence of a diverse

student body, faculty, and EEO-1 level administrative staff, which includes the highest leadership levels.

3. The President of Auburn University and the Chancellor of AUM will each produce a statement that affirms the respective institutions' good faith commitment to operate in a constitutional and non-discriminatory fashion, and a statement of support for diversity to reinforce the notion that diversity is an important institutional goal that contributes to the institution's educational mission.

V. Dismissal of Action and Settlement Implementation

A. Preliminary Court Approval of Agreement

1. Promptly after execution of this Agreement, but in no event later than 10 days after the execution of this Agreement, the parties to this Agreement, by joint motion, shall submit the Agreement to the District Court requesting that the Court enter an order granting preliminary approval of the Agreement. The District Court shall be requested to direct the giving of notice to the

plaintiff class and to schedule a fairness hearing. In the event the Court declines to preliminarily approve the Agreement, or to find the Agreement provides an adequate basis for issuing notice and scheduling a fairness hearing, then the entire Agreement shall become null and void unless the parties promptly agree in writing to other mutually satisfactory settlement provisions and agree to proceed with the Agreement, subject to approval by the Court.

B. Final Judgment

At the final hearing on fairness, adequacy, and reasonableness of the settlement as set forth in this Agreement, Auburn University and Knight-Sims Plaintiffs agree to cooperate in good faith to achieve the expeditious approval of the settlement, and shall request the Court to grant final approval of the Agreement and to enter judgment thereon ("Judgment"). In order to satisfy the requirements of the Agreement, the Judgment must include, by specific statement or by reference to the Agreement to the extent permitted by law and the rules of court, provisions

which:

1. Affirm certification of the proceeding as a class action pursuant to Rule 23 of the Fed. R. Civ. P. with the plaintiff class as previously defined by the Court;

2. Find that the notice given to class members satisfied the requirements of both Rule 23, Fed. R. Civ. P, and due process, and that the Court has jurisdiction over the class;

3. Find that the Agreement is fair, adequate, and reasonable in all respects;

4. Find that the class representatives, and all class members, have released all claims against Auburn University, all as set forth in the Agreement;

5. Order that Auburn University shall implement the Settlement Agreement;

6. Find that on judicial approval of this Agreement, including the commitments contained herein, Auburn University shall be in full compliance with the law, and that, therefore, there

are no continuing policies or practices of Auburn University, or remnants, traceable to *de jure* segregation, with present discriminatory effects which can be eliminated, altered or replaced with educationally sound, feasible and practical alternatives or remedial measures;

7. Dismiss on the merits and with prejudice (I) all claims against Auburn University set forth in the complaint, as amended; (ii) all claims against Auburn University set forth in the complaint-in-intervention; and (iii) all claims against Auburn University of racial discrimination asserted before the Court throughout the pendency of this action, the trials and appeals, and the entire remedial phase of the action including, without limitation, the Knight-Sims plaintiffs' contempt motion filed March 8, 2005, Doc. 3324, and claims of system or institutional aspects, features, policies and practices alleged to be remnants of the *de jure* system.

C. Finality and Term of Agreement

1. This Agreement shall become final upon the occurrence of all of the following events: (a) approval of the Agreement in all respects by the District Court as required by Rule 23(e) of the Fed. R. Civ. P.; and (b) entry of the Judgment as provided for above.

2. The term of the provisions of this Agreement shall be for five (5) years from the date it is finally approved by the Court. The Agreement shall be binding upon the successors and assigns of the parties and shall inure to their benefit.

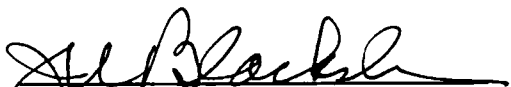
D. Enforcement

1. The parties to this Agreement, including all class members, agree that litigation regarding enforcement of this Agreement is counterproductive. If there is a claim that Auburn University has not complied with the terms of this Agreement, then the parties agree that resolution of any such allegation should first and foremost be achieved by informal discussions and

negotiations between counsel for the Knight-Sims Plaintiffs and counsel for Auburn University. Counsel for the Knight-Sims Plaintiffs, acting on behalf of the class members, shall notify counsel for Auburn University of the specific provision(s) of this Agreement that Auburn University's main campus or AUM has allegedly not complied with. Upon receipt of that notice, counsel for Auburn University agrees to work with its client within a reasonable time period to respond to that allegation, and if it concedes non-compliance, to make reasonable efforts to cure any alleged breach. Counsel for both parties agree to use good faith efforts to resolve legitimate disputes regarding differences of interpretation of the settlement agreement. If the parties are unable to resolve the matter, they agree to select a mediator acceptable to all the parties to reach a resolution to the issue. Each party will pay for their own fees and expenses associated with any dispute regarding compliance with the terms of this agreement.

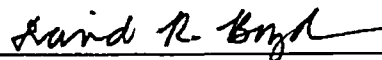
This 12th day of October, 2006.

For the Knight-Sims Plaintiffs
And plaintiff class,



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